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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,261	02/10/2006	Harmannus Franciscus, Maria Schoo	VE.25	5706
25871	7590	10/15/2007	EXAMINER	
SWANSON & BRATSCHUN, L.L.C.			HO, ANTHONY	
8210 SOUTHPARK TERRACE			ART UNIT	PAPER NUMBER
LITTLETON, CO 80120			2815	
MAIL DATE		DELIVERY MODE		
10/15/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/561,261	SCHOO ET AL.
	Examiner	Art Unit
	Anthony Ho	2815

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 August 2007.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 22-41 is/are pending in the application.  
 4a) Of the above claim(s) 37-41 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 22-36 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10 February 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 2/10/2006.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of claims 22-36 in the reply filed on August 2, 2007 is acknowledged.
2. Accordingly, claims 37-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 2, 2007.

### *Priority*

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Information Disclosure Statement*

4. The information disclosure statement (IDS) submitted on February 10, 2006 was filed after the mailing date of the instant application on February 10, 2006. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### *Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 22-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The recitation "two different electroluminescent functionalities" is vague and indefinite because applicants have failed to further clarify and define what the two different electroluminescent functionalities are. Therefore, one of ordinary skill in the art would not be able to define the metes and bounds of the claimed invention.

8. Claim 36 recites "wherein the LED, depending on the direction of the electric current through the active layer, emits light having a first intensity maximum or, conversely, light having a second intensity maximum, different from the first intensity maximum". This recitation is vague and indefinite because it is not clearly defined, it is a statement of the underlying problem, but does not provide features for achieving the result.

#### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 22-36, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Burroughes (GB 2340304).

Burroughes discloses a light emitting diode having at least one semiconductive electroluminescent active layer (page 12) which comprises at least two different electroluminescent functionalities (page 12, first paragraph), wherein the emission spectrum of the diode exhibits at least two intensity maxima (Figure 14) and wherein the LED comprises an electroluminescent polymer (F6M) and an electroluminescent single dye (perylene).

The recitation "detection system" in the claim preamble specifies an intended use or field of use and is treated as nonlimiting since it has been held that in device claims, intended use must result in a structural difference between the claim invention and the prior art in order to patentably distinguish the claim invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *In re Casey*, 152 USPQ 235 (CCPA 1967); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

11. Claims 22-36, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hatwar (EP 1286569).

Hatwar discloses a light emitting diode having at least one semiconductive electroluminescent active layer (Table 1) which comprises at least two different electroluminescent functionalities (Table 1), wherein the emission spectrum of the diode

exhibits at least two intensity maxima (Figure 8) and wherein the LED comprises a filter (paragraph 0050; paragraph 0096; paragraph 0060), which filter selectively has at least a reduced transmission of light of a wavelength between two consecutive maxima (the filter selects one maxima to produce a red, green or blue and has a reduced transmission for other wavelengths, therefore at least for wavelengths between two maxima).

The recitation "detection system" in the claim preamble specifies an intended use or field of use and is treated as nonlimiting since it has been held that in device claims, intended use must result in a structural difference between the claim invention and the prior art in order to patentably distinguish the claim invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *In re Casey*, 152 USPQ 235 (CCPA 1967); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Fujii (US PUB 2002/0071963)
- b. Grushin et al (US PUB 2002/0121638)

- c. Grushin et al (US PUB 2002/0190250)
- d. Epstein et al (US Patent 6,235,414)
- e. Papadimitrakopoulos (US Patent 5,946,550)
- f. Capasso et al (US Patent 6,278,134)

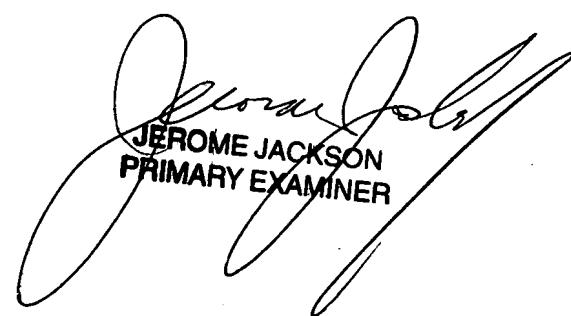
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Ho whose telephone number is 571-270-1432.

The examiner can normally be reached on M-Th: 8:30AM-7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Parker can be reached on 571-272-2298. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 13, 2007



**JEROME JACKSON**  
**PRIMARY EXAMINER**